

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**April 17, 2013**

This meeting was called to order at 6:00 p.m. by Chairperson Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Russell Moore, Scott Spendlove, and Necia Christensen

**Those Absent:**

Sioeli Uluakiola and Sandy Naegle

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman and Nichole Camac

**WEST VALLEY CITY LEGAL DEPARTMENT**

Brandon Hill, Assistant City Attorney

**AUDIENCE:**

Approximately one (1) person was in the audience.

**B-2-2013**  
**Bryce Atkinson – Frontage Variance**  
**5214 West 4100 South**  
**R-1-8 Zone**

**REQUEST:**

Mr. Bryce Atkinson, is requesting a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the frontage of a lot in the R-1-8 zone be 80 feet. The applicant is requesting a frontage variance of 15 feet for the purpose of subdividing the existing property to create an additional building lot.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as parcel 14-36-381-019. This property is not part of a formally platted subdivision and contains one single family dwelling. County records indicate that the dwelling was constructed in 1923 on a property of approximately .37 acres in size.
- ☐ The applicant approached staff about the possibility of dividing the existing property into two lots. The purpose for the division would be to construct a new single family dwelling. Staff explained that the R-1-8 zone requires an 80-foot frontage for each lot. If the property were to be divided, the corner lot would meet the frontage requirement along 5200 West, but the new lot would be deficient of the requirement by 15 feet.
- ☐ Staff explained the variance criteria and that the Board of Adjustment would need to evaluate the criteria in relation to the specifics of the property. Mr. Atkinson believes that the variance criteria can be satisfied and that a new home on what has been the vacant portion of this property will improve the area.
- ☐ As mentioned previously, there is an existing dwelling. Fortunately, this dwelling is situated towards the intersection of 4100 South and 5200 West. The location of the existing home would allow the property to reasonably develop without the need for additional variances.
- ☐ The frontage on the new lot would be 65 feet, thus, the variance request of 15 feet. All other requirements of the R-1-8 zone will be met including the area requirement of 8,000 square feet. Based on preliminary measurements, the existing home would meet setback requirements from the new property line.
- ☐ Should the Board of Adjustment approve the variance, the applicant will be required to submit a minor subdivision and/or lot split application. The new single family dwelling would be required to meet all provisions of the City's housing standards.

□ **ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires that the minimum frontage of a lot in the R-1-8 zone be 80 feet.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

Steve Lehman presented the application. Russell Moore asked what the current setbacks are on the existing home. Steve replied that due to the 4100 S widening it would be legally non-conforming. Mr. Moore asked if 4100 S is a City road. Steve replied yes.

**Applicant:**

Bryce Atkinson  
10138 S Dunsinane Drive  
South Jordan, UT 84095

**Bryce Atkinson**

Mr. Atkinson stated that he has significantly improved this site and has decided that he would like to create another parcel to construct a second home on. He indicated that he thought of different options prior to coming to this decision. Mr. Atkinson indicated that this property was leftover from a dairy operation and stated that it has since become overgrown with weeds. He stated that there is another parcel on 4100 South that is very similar and added that he feels this is a good lot to have a home on. Mr. Atkinson stated that dividing this property into two parcels will help improve the area significantly and will match other lots and home

designs in the neighborhood. Mr. Atkinson stated that this property meets all the requirements of the 'R-1-8' zone with the exception of width.

1. **Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Atkinson stated that the property is difficult to manage from a maintenance standpoint and will therefore be very difficult to market and sell. He stated that the property was very overgrown and not well taken care of when he purchased it.

2. **There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Atkinson stated that there is only one other property on 4100 S with a similar configuration as this one. He explained that there is a lot of space on the west side of the property because the home was placed much closer to the east property line.

3. **Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mr. Atkinson stated that this would allow another home on the property that is consistent with others in the area and would still meet the 'R-1-8' zoning.

4. **The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mr. Atkinson stated that a single family home is consistent with the General Plan.

5. **The spirit of the zoning ordinance is observed and substantial justice done.**

Mr. Atkinson stated that this variance is relatively minor and isn't out of character with other properties in the area.

**Discussion:** Necia Christensen stated that there are some changes that will be occurring on 4100 South and the City is addressing issues related to housing and development. Steve read a letter provided by Corey Rushton, a City Council member and resident. He indicated that Mr. Rushton wants to preserve housing but isn't sure if this variance will affect the goals of the City. Russell Moore stated that this isn't something the Board can really take into consideration because it is difficult to project what the City's plans will be for the future. Steve stated that the property is not deep enough to develop commercially so this wouldn't be an option.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

## **Motion**

Mr. Spendlove moved for denial due to lack of meeting criteria

Ms. Moore seconded the motion.

**Discussion:** Scott Spendlove stated he feels criteria number 1 and 3 are not appropriately addressed. He indicated that economic hardship cannot be the sole reason to grant a variance and added that difficulty in managing overgrowth is too narrowly defined to create a lack of enjoyment on a property. Mr. Spendlove added that he feels the shape of the lot is consistent with many in the area. Mr. Moore agreed and added that the property to the north has a similar size and meets all setback requirements. He added that when roads expand there will always be a shift in property lines which is why this home is close to the eastern side of the lot. Necia Christensen stated that the existing home can be removed and a nicer house built with appropriate setbacks. She stated that just because the property is difficult to manage doesn't mean that it's an intolerable hardship.

A roll call was taken.

Mr. Uluakiola	AB
Mr. Moore	Yes
Mr. Spendlove	Yes
Ms. Naegle	AB
Chairperson Christensen	Yes

**Motion for Denial Carries - B-2-2013– Unanimous**

### **OTHER**

The minutes from **February 6, 2013** were **approved**.

There being no further business the meeting adjourned at 6:34 p.m.

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Nichole Camac, Administrative Assistant